IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2807 of 2006
to
FIRST APPEAL No.2814 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPL.LAQ OFFICER & 1 - Appellant(s)
Versus
VIHABHAI BHAKABHAI VAGHRI & 1 - Defendant(s)

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Appearance :
MR LR PUJARI, ASSTT. GOVT. PLEADER for Appellants
NOTICE SERVED BY DS for Defendant(s) : 1 - 2.

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 10/10/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. The record shows that the claimant/ claimants in each Appeal is/ are duly served with the notice for final disposal of the Appeals but none of them has appeared either through lawyer or in-person. Under the circumstances, this Court is of the opinion that it is not necessary for the appellant to effect service of notice of admission of these Appeals upon the claimant/claimants in these Appeals. Mr.L.R.Pujari, learned Assistant Government Pleader, states at the Bar that the interest of the appellants and that of the respondent No.2, i.e. the Executive Engineer, Narmada Project Canal Division No.9, Dehgam, Gandhinagar, is identical and not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellants to effect

service of notice of admission of these Appeals upon the respondent No.2. Having regard to the facts of the case, the Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of common judgment and award dated August 31, 2004, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Ahmedabad, in Land Acquisition Case Nos.51/2000 to 58/2000 by which the claimants are awarded additional compensation at the rate of Rs.37.80 ps. per sq.mt. over and above the compensation awarded to them at the rate of Rs.4.20 ps. per sq.mt. by the Special Land Acquisition Officer vide his award dated February 9, 2000, for their acquired lands.

3. The Executive Engineer, Narmada Project Canal Division No.9, Dehgam, Gandhinagar, proposed

to the State Government to acquire the agricultural lands of village Hathijan, Taluka: Dehgam, District: Ahmedabad, for the public purpose of construction of Hathijan-Bahiyal road. On consideration of the said proposal, the State Government was satisfied that the agricultural lands of village Hathijan were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on February 16, 1998. The land owners were thereafter served with notices under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Hathijan specified in the notification published under

Section 4(1) of the Act were needed for the public purpose of construction of Hathijan-Bahiyal road. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on July 31, 1998. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated February 9, 2000, offered compensation to the claimants at the rate of Rs.4.20 ps. per sq.mt. for irrigated lands and Rs.2.80 ps. per sq.mt. for non-irrigated lands. It may be mentioned that the Court in the instant Appeals is concerned with irrigated lands of village Hathijan. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was

totally inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R), where they were registered as Land Acquisition Case Nos.51/2000 to 58/2000.

4. On behalf of the claimants, witness Kalubhai Abdulbhai was examined at Ex.24. Over and above stating that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of agricultural produces, the witness produced previous award of the Reference Court rendered in Land Acquisition Case Nos.54/1994 to 83/1994 and Land Acquisition Case No.160/1994 to 214/1994 on January 31, 2002, relating to the lands of this very village in support of the claim of the claimants for enhanced compensation. The witness also

produced Village Form No.7/12 extracts at Exs.14 to 22 to establish that the lands acquired were highly fertile and that the claimants were raising crops like cotton, castor, paddy, Rayda, wheat, juvar, Rajka, etc. This witness was cross-examined at length by the learned District Government Pleader for the appellant. However, the assertion made by the witness that the Reference Court had awarded compensation to those whose lands were acquired earlier from this very village could not be demonstrated to be untrue.

5. On behalf of the appellants, Mr.S.S.Jafar, who was then discharging duties as Deputy Executive Engineer was examined at Ex.31. Initially, he maintained before the Court that the Special Land Acquisition Officer had awarded compensation to the claimants after taking into consideration all the relevant factors enumerated in the Act and therefore, they were not entitled to enhanced

compensation. However, in cross-examination by the learned counsel for the claimants, he had to admit that before he had resumed duties at Bahiyal, the lands in the instant case were already acquired. It was further mentioned by the said witness in his cross-examination that he was not present at the time when the lands acquired were measured or when the award was made by the Special Land Acquisition Officer under Section 11 of the Act. What is relevant to notice is that the said witness has in terms admitted that he was not knowing anything about the fertility of the lands acquired. It was also admitted by the said witness that earlier, the lands from this very village were acquired for the public purpose of construction of main canal and that the judgment delivered was implemented by making payment of compensation to the claimants of those cases and that the said judgment was accepted by the Government.

6. On appreciation of evidence adduced by the

parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village furnished good guidance for the purpose of assessing the market value of the the lands subsequently acquired in the instant case. It was noticed that in the previous case, notification under Section 4(1) of the Act was published in the official gazette on September 29, 1991 and the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.2.70 ps. per sq.mt. but the Reference Court, by judgment dated January 31, 2002, had granted additional compensation to the claimants at the rate of Rs.25.30 ps. per sq.mt. The learned judge noticed that there was time-gap of about five years in the publication of notifications issued under Section 4 of the Act and therefore, the claimants in the instant case were entitled to reasonable rise in price of lands at the rate of 10% p.a. Calculating the amount of

compensation payable to the claimants on the basis of the previous award of the Reference Court relating to the lands of this very village, the Reference Court in the instant case has held that the claimants would be entitled to additional compensation at the rate of Rs.37.80 ps. per sq.mt. by the impugned judgment and award giving rise to the abovenumbered Appeals.

7. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellants at length and has considered the paper-book supplied by the learned Assistant Government Pleader, which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

8. On re-appreciation of facts emerging from the record of the case, this Court finds that though it was claimed by the claimants that the lands acquired were highly fertile and that each claimant was earning substantial income from the sale of agricultural

produces, no evidence was adduced to substantiate the said claim nor the enhanced compensation was claimed on yield basis. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous award of the Reference Court relating to the lands of this very village which was rendered in Land Acquisition case No.172 of 1994 and cognate matters on January 31, 2002. The said previous award is produced by the claimants at Ex.22. A perusal of the same indicates that a proposal was received from the Executive Engineer, Narmada Project (Main canal) Construction Division No.9, Dehgam, for the purpose of acquiring the agricultural lands of village Hathijan for construction of Narmada Main Canal of Sardar Sarovar Project. In the said case, notification issued under Section 4(1) of the Act was published in the official gazette on September 29, 1991 and not on May 1, 1993, as is observed by the Reference Court in the judgment impugned in the instant Appeals.

Therein, the Special Land Acquisition Officer, by his two awards dated May 1, 1993 and March 22, 1993, had offered compensation to the claimants at the rate of Rs.2.70 ps. per sq.mt. Feeling aggrieved, the claimants had sought References and the Reference Court awarded additional compensation to the claimants at the rate of Rs.25.30 ps. per sq.mt. by judgment and award dated January 31, 2002. It is well settled that the previous award of the Reference Court, relating to the lands of a village, which has attained finality, can be relied upon for the purpose of assessing the market value of the lands acquired subsequently from the same village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court rendered in Land Acquisition Case No.172/1994 and cognate matters for the purpose of determining the market value of the lands acquired in the instant case. The Reference

Court was of the opinion that in view of the time-gap of about five years between two notifications which were published under Section 4(1) of the Act, the claimants were entitled to reasonable rise in price of lands at the rate of 10% p.a. This conclusion of the Reference Court is well founded in view of the decisions of the Supreme Court laying down the principle that the price of the lands cannot be freezed at a particular point of time and that reasonable rise in price should be granted to the claimants in case there is time-gap between the notifications issued under Section 4(1) of the Act. On re-appreciation of evidence, this Court finds that correct findings of facts have been recorded by the Reference Court after appreciation of evidence adduced by the parties to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a different view of the matter than the one taken by the Reference Court and

therefore, the instant Appeals, which have no merits, are liable to be dismissed.

9. For the foregoing reasons, the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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